CPMG / KA / BG-GPO-13 / 2003-2005



ಕರ್ನಾಟಕ ರಾಜ್ಯಪತ್ರ

ಅಧಿಕೃತವಾಗಿ ಪ್ರಕಟಿಸಲಾದುದು

ಸಂಪುಟ ೧೩೮	ಬೆಂಗಳೂರು, ಗುರುವಾರ, ಸೆಪ್ಟೆಂಬರ್ ೨೫, ೨೦೦೩ (ಆಶ್ವಯುಜ ೩, ಶಕ ವರ್ಷ ೧೯೨೫)	ಸಂಚಿಕೆ ೩೯

ಭಾಗ - ೪

ಕೇಂದ್ರದ ವಿಧೇಯಕಗಳು ಮತ್ತು ಅವುಗಳ ಮೇಲೆ ಪರಿಶೀಲನಾ ಸಮಿತಿಯ ವರದಿಗಳು, ಕೇಂದ್ರದ ಅಧಿನಿಯಮಗಳು ಮತ್ತು ಅಧ್ಯಾದೇಶಗಳು, ಕೇಂದ್ರ ಸರ್ಕಾರದವರು ಹೊರಡಿಸಿದ ಸಾಮಾನ್ಯ ಶಾಸನಬದ್ಧ ನಿಯಮಗಳು ಮತ್ತು ಶಾಸನಬದ್ಧ ಆದೇಶಗಳು ಮತ್ತು ರಾಷ್ಟ್ರಪತಿಯವರಿಂದ ರಚಿತವಾಗಿ ರಾಜ್ಯ ಸರ್ಕಾರದವರಿಂದ ಪುನಃ ಪ್ರಕಟವಾದ ಆದೇಶಗಳು.

ELECTION COMMISSION OF INDIA
Nirvachan Sadan, Ashoka Road, New Delhi- 110 001.
NOTIFICATION
ಸಂಖ್ಯೆ: ಸಿಆಸುಇ / 20/ ಚುತಅ/ 2000, Dated: 27th August 2003, 5 Bhadrapada 1925 (Saka)

No. 82/ KT-LA/3/99/2003,- In Pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the Judgement/ Order of the High Court of Karnataka Bangalore, dated 20-3-2003 in Election Petition No. 3 of 1999.

IN THE HIGH COURT OF KARNATAKA, BANGALORE
DATED THIS THE 20TH DAY OF MARCH, 2003
BEFORE
THE HON'BLE Mr. JUSTICE R. GURURAJAN
EP No. 3 OF 1999

BETWEEN

1. Laxman Sangappa Savadi,
   Age: 39 years, Occ: Agriculture,
   R/o. Naganur P. K. Taluk Athani, Dist: Belgaum. ......PETITIONER (S)
   (By Sri S. M. Patil (Ankalgi) Adv., Sri Jagadish Patil, Sri Ravivarma Kumar Adv.,)

AND

1. Dongaragaon Shahajan,
   S/o. Ismail, Age: Major, Occ: Agriculture,
   R/o Hotahalli, Taluk Athani, District Belgaum.
2. Gangaram Balu Sataputs,
   Age: Major, Occ: Agriculture,
   R/o. Sambaragi, Taluk Athani, District: Belgaum.
3. Jyothirao Banthi,
   Age: Major, Occ: Agriculture,
   R/o. Harogeri, Taluk Raibag, Dist Belgaum.
4. Patil Basavaprabhu Lakhagouda, Age: Major, Occ: Agriculture,
   R/o. Malabag, Taluk Athani, District Belgaum.

5. Ravindra Dhanavant Halingali,
   Age: Major, Occ: Advocate,
   R/o. Telasanga, Taluk Athani, Dist Belgaum
   Now at Hulyalakargalli, Jamakhandi.
6. Leeladevi R. Prasad,
   Age: major, Ex- Minister,
   R/o. Talsanga Medical Stores Main Road, Athani,
   Now at Bangalore-4, Sadashivanagar.
7. The Returning Officer,
   209, Athani, Assembly constituency Athani, Belgaum Dist. .....RESPONDENT (S)

(By Sri R. Sharathchandra For R-3
Sri B. S. Subbramaiah R-6
Sri Tajuddin, HCGP For R-7
Sri K. Anand Kumar For R-2
Sri C. B. Srinivasan and A. K. Vasanth and
V. P. Kulkarni For R-1
R-4 and 5 Served)

This petition is filed u/s 81 of the Representation of People Act 1951 the by Petition candidate at 1999 General election to the Karnataka Legislative Assembly Constituency No. 209 Athani Assembly Constituency held on 7-10-1999, to declare that the election of respondent No. 1 to the House of Assembly is null and void and set aside the same and alternatively prays that the petitioner be duly declared as elected to fill the seat of the House. Etc.,

This Petition having been reserved for orders, coming on for pronouncement this day, the court made the following;

ORDER

Laxman Sangappa Savadi, an unsuccessful candidate in the election to the Athani constituency is before me seeking for a declaration declaring that the election of first respondent to the House of Assembly from 209 Athani Constituency as null and void. Petitioner alternatively prays that the petitioner be duly declared as elected to 209 Athani Assembly Constituency to fill the seat of the house.

2. Facts as narrated in the petition are as under;

Petitioner hails from an agricultural family and is a social activist in Athani for several years. He is an active member of National United Janata Dal political Party. He aspired to contest to the seat of Assembly from 209 Athani Constituency and sought for ticket from the United Janata Dal Party. Party issued him "A" and "B" forms to file his nomination. Prior to issue of those forms the petitioner had filed nomination on 23-8-1999 and he had submitted the forms on 24-8-1999 at 2.45 PM to the Returning Officer. The Same political party issued "A" and "B" forms to Respondent No. 6 to contest in the said election form the same constituency. Smt. Leeladevi R. Prasad, approached the President of the Political Party to get clarification. Ultimately, the President of the political party issued forms to the petitioner canceling the forms issued to Respondent No. 6. According to the petitioner he was under the impression that he alone represents the United Janata Dal party in the said election. Nominations were scrutinized on 25-8-1999. The Returning Officer returned the form of the petitioner on the ground that respondent No. 6 has filed another set of "A" and "B" forms at 2.59 PM by canceling the forms already submitted by the petitioner. Petitioner made a representation at 12.40 PM stating that the petitioner has been issued with "A" and "B" forms by the President of the party and such forms have been issued to respondent No. 6 also and there is some confusion regarding "A" and "B" forms, and that a clarification is necessary from the President of the Party. He requested for 24 Hours time to get clarification from the President. The respondent No. 7 passed an order on 25-8-1999 accepting the notice in B form in respect of Respondent No. 6 and treated her as the candidate set up by the United Janata Dal Party and the notice in Form B in respect of the petitioner was not accepted. Petitioner's grievance is that an erroneous order has been passed by the seventh respondent and that there is non-application of mind. The refusal of time is contrary to Sec. 36 (5) of the Representation of People Act. Respondent No. 6 was the Minister for Kannada and Culture and she has misused the machineries of the Government according to her convenience and got the Returning Officer of her choice to do her misdeeds and illegalities with a sole object to get elected. Respondent No. 7 has acted as a tool of Respondent No. 6 Petitioner also complains that the denial of time has caused injustice to him. This according to him is a patent error.

Elections were held both to the Legislative assembly and Lok Sabha on 11-8-1999. The Ballot paper of the Assembly consisted of the symbol allotted to the respondents representing the various parties. Voters were under- confusion while casting their votes, as more than 6000 votes have been invalidated due to casting of two votes on the ballot paper of Assembly election. The symbol allotted to the petitioner was "Aeroplane" and the voters desire is to vote to "arrow" symbol in respect of Lok Sabha election. The gullible voters could not distinguish the ballot papers of Assembly and Lok Sabha. According to the petitioner, if he had contested the election with the recognition of United Janata Dal, he could have been easily elected to fill the seat of the assembly. Respondent No. 1 in collusion with respondent No. 7 has rejected the application of the petitioner. Respondent No. 1 was in full control of Respondent No. 7. With these facts, petitioner wants the election of the first respondent to be set aside by this Court.

3. Respondents have entered appearance pursuant to the notice by this Court. Written statement is filed by the first respondent- winning candidate. In the written statement it is stated that the election process and declaration made by R-7 is in accordance with law. He has also stated that the differences between R-1 and 6 are inner party rivalries. Neither the first respondent nor the returning officer can be held responsible for the same. He has stated that the petitioner did request the returning officer to get confirmation from the President of his Party regarding the confusion in issuing B- forms. The Returning Officer has rightly come to a conclusion that giving 24 hours time to the petitioner does not serve any purpose because the stipulated time to file nomination along with "A" and "B" forms has already been over. No further information can be entertained after the stipulated time was over. With regard to various allegations made against the petitioner, those allegations are denied by a detailed statement. In so far as Section 36 (5) is concerned, respondent No. 1 states that the returning officer shall not allow any adjournment of the proceedings except when such proceedings are interrupted or obstructed by riot or open violence or causes behind his control. In the instant case there is no such interruption or obstruction warranting any time. The Returning Officer according to the respondent is correct in rejecting the prayer of the petitioner for grant of time. In so far an allegation against R-6 is concerned, they have been denied.

4. Respondent No. 7 has also filed a written statement. The seventh respondent has denied the allegations made against him. He further states that the petitioner did file his nomination on 23-8-99 for contesting 209 Athani Assembly Constituency. The nomination paper was not accompanied by Form-A or Form-B issued by any political party. Petitioner submitted the forms on 24-8-1999. In the Form-B submitted by the petitioner, the Form-B issued in favour of the 6th respondent was rescinded. The scrutiny of nomination papers was scheduled on 25-8-1999. Petitioner as well as respondent No. 6 filed two sets of Form B each, and only after scrutiny and also after holding enquiry by this respondent it was found that the Form B submitted by the sixth respondent is to be accepted. This respondent has further stated that at the time of scrutiny i. e., on 25-8-1999, he has examined the validity of Form-B of the sixth respondent as well as the petitioner. Even in the event, if any information afresh was to be given by any of the contestants in this regard he could not have entertained the same after 3 PM on 24-8-1999 as it was the last date for filing of nomination papers. As per Sec. 36 of Representation of People Act, the returning officer shall not allow any adjournment of the proceedings except when such proceedings are interrupted or obstructed by riot of open violence or causes beyond his control. No such circumstances exist in the case on hand. He has acted in accordance with law. The case of the petitioner does not fall within the purview of sec. 36 of the Act. He has also denied with regard to the allegations made against him.

5. My Brother Judge who was the Election Judge in this case earlier, has framed the following issues.

1. Whether the petitioner proves that the Form No. A and B issued by the Party President to Respondent No. 6 were cancelled at his instance and further the form No. A and B came to be issued by his party Janata Dal United in his favour to make him an official candidate of his party?
2. Whether the petitioner proves that the refusal of his prayer for postponement of the scrutiny of nomination papers by 24 hours by respondent No. 7 the Returning Officer was illegal and had resulted in material irregularity in the conduct of the election?
3. Whether the respondent No. 7 Returning Officer had acted with bias and prejudice resulting in material irregularity in the conduct of the election as pleaded by the petitioner?
4. Whether the petitioner proves that the respondent No. 7 Returning Officer acted with prejudice as against him and accepted the Form No. "A" and "B" submitted by the respondent No. 6 to treat her as official candidate of the Janata Dal United Party and further he had acted with material irregularity in the matter of conduct of the election?

5. Whether the petitioner proves that the respondent No. 7 the Returning Officer had illegally rejected the Form No. "A" and "B" submitted by the petitioner claiming to be an official candidate of the Janata Dal United Party and thus he had acted with material irregularity in the matter of conduct of the election?
6. Whether the petitioner proves that he suffered prejudice or prejudices in the elections, because he was permitted to contest the same as an independent candidate?
7. Whether the petitioner proves that there was any material irregularity in the matter of conduct of the election in question as the elections to the State Assembly and the Lokasabha had been conducted together and jointly and whether because of that he suffered prejudice in the election?
8. Whether the petitioner proves that the respondent No. 7 had shown favoritism to the respondent No. 6 in any way?
9. Whether the petitioner is entitled to have a declaration that the result of the election of the first respondent is null and void?
10. Whether the petitioner is entitled to for a declaration that he is a duly elected candidate to 209. Athani Assembly constituency?
11. Whether the petitioner alternatively is entitled to have a direction for re-poll in the matter of election to No. 209 Athani Assembly Constituency?
12. Whether respondent No. 1 proves that the petitioner had not approached this Court with clean hands and thus entitling him for exemplary cost in the Election Petition?
13. To what relief the petitioner is entitled to in the election petition?

Witnesses have been examined on behalf of the parties. On behalf of the petitioner three witnesses have been examined and respondent No. 1 has examined one witness. Witnesses have given evidence in terms of the pleadings. Witnesses have been fully cross- examined. Petitioner has filed as many as eighteen documents and respondent has filed as many as four documents.

6. At the time of arguments, Sri Ravi Varma Kumar, learned counsel filed list of dates and argued at great length. He took me through the pleadings to contend that in the case on hand. Petitioners as well as the sixth respondent filed their respective nomination as official candidates of United Janata Dal Political Party for Athani Constituency. He invites my attention to the Representation of People Act, 1950. 1951 Act regulates the conduct of elections. Section 30 provides for appointment of dates for nomination. Sections 31 to 36 provides for various stages in the matter of public notice, filing of nomination, scrutiny etc. There is a prescribed procedure in the matter of nomination to a political party and for non-political party. Section 33 provides for a nomination of a political party. Sec. 36 (2) provides for rejection of a candidate. According to the learned counsel this code is a complete code by itself. He essentially concentrated on Sec. 36 (2) to contend that in the case on hand the said proviso is clearly violated by the seventh respondent. After taking me through the two sets of forms filed by the petitioner as well as the sixth respondent he states that he sought for time of 24 hours in terms of an application. The same was rejected by an order at Ex. P-12 to his disadvantage. He also says that Sec. 13 A of the Election Symbols Order cannot be understood to deny a reasonable opportunity in the case on hand. He also took me through the relevant dates to contend that he has made out a case in this court in terms of sec. 100 (3) (c) of the Act. He also took me through the evidence on record. He read to me the evidence of PW-1 who reiterates these allegations against R-7. Ex-P.11 is a written request of the petitioner and Ex-P.12 is a written order rejecting his request. He states that the fairness as expected of Respondent-7 is not seen in the case on hand. Respondent -7 has prejudged the entire issue according to the learned counsel. He strongly relies on 1992 SCC 496 in the case on hand. At the time of argument, learned counsel for the petitioner would say that he would not like to press the issues 3, 4, 7, 8. 10, 11 and 12. Sum and substance of the argument of the learned counsel is that there is a clear violation of statutory requirement of time in the case on hand. According to him, the same has resulted in a void election and the said election has to be set aside by this Court.

7. Per contra, learned counsel for the first respondent would say that the facts of this case warrant no interference. He states that the internal quarrel between the two candidates belonging to the same political party should not come in his way of getting elected to the Assembly. He states that nomination in terms of the statute has to be understood on the facts of this case. In the case on hand, according to the learned counsel, nomination is not rejected, only Form-A and B is rejected which according to the learned counsel would mean that the tag of the political party is removed and not the nomination as such. He makes a distinction between nomination to the election and rejection of forms A

and B in respect of a political party. According to the learned counsel Sec. 36 (5) has no application at all to the given set of facts. Moreover, according to the learned counsel the petitioner has contested the election as an independent candidate and therefore it cannot be said that the nomination as such has been rejected in terms of the Act. He took me through Ex. P6, 7, 12, 16 and 17 to contend that no case as such is made out. In so far as the application is concerned, learned counsel states that it is true that 24 hours time was sought and the same has been rejected. He states that the rejection is in accordance with law in the light of sec. 13A which is introduced subsequent to the judgement of the Supreme Court in AIR 2000 SCW 3250. Learned counsel relies on the judgement of the Supreme Court to contend that it is only a statutory right available to a candidate in the matter of election. In so far as Sec. 100 (1) (c) is concerned, learned counsel says that no case is made out. He explains to me the judgement of the Supreme Court to say that the said judgement is not applicable to the facts of this case. Nomination and that is not the case here. Moreover that was pre-amendment and Sec. 13A was not available and therefore the counsel says that the same is to be understood as a judgement on the facts of that case.

8. In reply Sri Ravi Varma Kumar, learned counsel reiterates his earlier arguments and further says that petitioner has made out a case requiring my interference. According to him the judgement of the Apex Court reported in 1992 SCC 496 is squarely applicable to the facts of this case. He further says that mere introduction of Rule 13A would not take away the rigor of the judgement of the Supreme Court. Let me see in the light of the argument, a case is made out or not in the given set of evidence.

9. Issue No. 1 contains two part. The first part is with regard to proof by the petitioner with regard to cancellation in favour of R-6. Material evidence would prove that Form-"A" and "B" issued in favour of respondent No. 6 initially was cancelled at the instance of the petitioner. The first part of this issue in these circumstances is answered in favour of the petitioner. The second portion of the issue with regard official candidate has to be considered along with issues 2-4 and 5. In fact at the time of arguments, both the parties concentrated only on these issues.

10. Issues 1, 2, 5, 6, and 9.

The Second portion of the first issue is with regard to proof of the petitioner being a official candidate of Janata Dal (U) political party. Issue No. 2 deals with the refusal for postponement of scrutiny resulting in material irregularity and illegality. Issue No. 5 deals with illegal rejection of the form submitted by the petitioner as an official candidate of Janata Dal (U) party. Issue No. 6 deals with prejudice in the elections and issue No. 9 deals with regard to declaration of the election of the first respondent being null and void. All these issues, in one-way of the other, are interlinked with one another. Learned counsel also addressed combined arguments in respect of these issues. It is useful to notice the pleadings of the parties in this regard.

11. In the petition filed by the petitioner, petitioner states that he is an active member of JD (U). It is further stated that the party had issued him Forms-A & B to file his nomination along with other forms. He has submitted the forms at 2.45 PM to the Returning Officer. Scrutiny has taken place and at the time of scrutiny, Returning Officer rejected the forms of the petitioner on the ground that respondent -6 has filed another set of B forms at 2.59 PM by canceling the Forms already submitted by the petitioner. He has also stated in the petition that the said rejection is erroneous in the matter. Petitioner has also stated that he submitted an application seeking for grant of 24 hours for getting clarification and time was rejected and an order was passed to his detriment. The same is countered by the contesting party. It is stated in the written statement that the rejection is proper and legal in the light of various provisions of the Representation of People Act. Evidence also is recorded in this regard.

12. PW-1 is the petitioner. He has reiterated the averments in his evidence. PW-2 is an advocate and while supporting the petitioner's case he has stated that on 25-8-1999 scrutiny of papers was set down by R-7. Petitioner was present along with his witness. During the time of scrutiny, respondent 6 was represented by an advocate and he argued that nomination of R-6 is to be accepted. Per contra, according to PW-2 nomination paper and Form-B submitted by the petitioner has to be accepted. He also argued that within 14 minutes that it is not possible for R-6 to produce another B- form and at that time prayed for 24 hours time to clarify the issue.

13. RW-1 returning officer has stated in evidence that as per the calendar of events published by the Election Commission 24-8-99 up to 3 O' clock was the last date for filing the nomination papers to the 209 Athani Assembly constituency. The nomination papers were taken up for scrutiny on 25-8-1999 and all the candidates and their agents and official representatives attended the scrutiny. He states as under;

"None had raised any objection till I have taken up the nomination papers of the respondent No. 6 or scrutiny, I informed the candidate and others present there that the respondent No. 6 had produced B form from JD (U) party. At that time, petitioner informed RW-1 that he also had obtained B form from Janata Dal (U) party. Thereafter, he states that petitioner prayed for time to file his written representation and hence he postponed the scrutiny of the nomination paper of respondent No. 6 then in hand till 1.00 PM on that day. Then at about 1.00 PM I have yet again taken up the nomination papers of the respondent No. 6 for scrutiny. I also say that, that was done by me at the end. At the same time, I also took up the nomination paper of the petitioner simultaneously for scrutiny.

Before 1.00 PM on that day, the petitioner had given me his written representation, copy at Ex. P. 11. I identify the said representation the petitioner had filed before me. I have considered the said representation filed by him. Since the petitioner was represented by his Counsel, I heard the petitioner through him. The learned counsel appearing for the respondent No. 6 too argued her side of the case. She also gave a written representation, through her counsel.

In filing the written statement as Ex. P. 11, the petitioner had contended that he had filed two separate forms No. B before me and that the respondent No. 6 had also filed two B form before me independently. According to the petitioner there was some confusion with regard to the issuance of the Forms No. B and further that, it was difficult for me to allot the party symbol of JD (U) party. He also prayed before me for extension of time of 24 hours for the purpose of getting necessary clarification from the party President of JD (U).

Because of the above situation, I afforded the petitioner on the one side and the respondent No. 6 on the other to present their respective side of the case and thereafter, I passed a considered order thereon as at Ex. P - 12. I see Ex. P- 12 now before and I identify the same. In my said order, I have accepted the argument advanced by the respondent No. 6 and accordingly. I have treated her as the official candidate of JD (U) party. Because of that conclusion I have reached. I have rejected the nomination paper of the petitioner filed for an on behalf of JD (U) party. Accordingly, to me, I have passed the considered order as above, by applying my mind and I further say that the same was in consonance with law".

14. From the pleadings and the evidence what is clear to me is that the Returning Officer has accepted the nomination of R-6 as an official candidate of JD (U). In fact Mr. Ravi Varma Kumar, learned counsel has filed list of dates and the list of dates would reflect in short form the admitted material pleadings and evidence.

List of Dates

1.	11-7-1999	Elections announced
2.	17-7-1999	Notification of Election
3.	20-8-1999	Respondent files two nominations as JDU candidate
4.	23-8-1999	Petitioner filed his nomination paper 2.45 PM
5.	24-8-1999	Last date for filing nominations
6.	24-8-1999	Forms A & B canceling form B issued to R-6 filed at 2.45 PM
7.	25-8-1999	Date of scrutiny
8.	25-8-1999	Respondent files forms A & B purporting to cancel those issued in Favour of the petitioner at 2.59 PM
9.	25-8-1999	Petitioner's representation to Returning Officer seeking time.
10.	25-8-1999	Returning Officer passes order rejecting the nomination papers of the petitioner as JDU candidate.
11.	25-8-1999	Last date for withdrawal
12.	27-8-1999	List of contesting candidates announced
13.	27-8-1999	Petitioner treated as Independent and respondent No. 6 treated as JUD candidate.
14.	11-9-1999	Date of Poll
15.	6-10-1999	Counting held
16.	7-10-1999	Result declared
17.	2-11-1999	Election petition filed

15. A joint reading of the issues would show that in the case on hand, in the light of admitted facts a plea is raised with regard to the violation of Sec. 36 (5) read with Rule, as applicable to the facts of

this case. It is also at this stage, necessary to notice Form-A and B filed by the parties. Ex. P-1 is the nomination paper in Form 2-B filed on behalf of the petitioner. In part 2 column 1 (B) it is stated that this candidate is set up in this election by the JD (U). Ex. P -3 is Form -A issued by Sri Sharad Yadav, President of the party dated 11-8-1999. Ex. P-4 is Form-B submitted by the petitioner for which it is stated that the notice in From-B given earlier in favour of Smt. Leeladevi R. Prasad, as parties approved candidate is hereby rescinded. At Ex. P 4A it is seen that the same was received at 2.45 PM. Ex. P-5 is again Form -A issued by the President of the party and Form-B, Ex. P-6 shows that the nomination in Form-B given in favour of Smt. Prabhu R. Prasad is rescinded. The same was received at 2.59 PM. Ex. P-7 and 8 are submitted by respondent No. 6. Ex. R-1 is the nomination of the petitioner as an independent candidate received at 1.15 PM. Ex. R-3 is the crucial document which has been presented by respondent No. 6 Ex. R-4 is Form-B submitted by the respondent No. 6 in which the notice in Form -B given in favour of the petitioner is rescinded. The same was received on 24-8-1999 at 2.59 PM. On coming to know of this, petitioner filed Ex. P-11 requesting for 24 hours time to get confirmation from the President of the party. Evidence also reveals that the Returning Officer after noticing all these material facts has chosen to accept the notice in Form -B filed by R-6 and treat her as the candidate set up by the JD (U). He has not accepted the Form-B submitted by the petitioner. He has rejected the request of the petitioner for time and in the order it is stated that as per Rule 13 of the Election Symbols Order (Reservation and allotment) 1968, Smt. Leela Devi R. Prasad, respondent No. 6 is the candidate, who has delivered her nomination papers first to the Returning Officer and that being the position, the said Form -B has been accepted. It amounts to acceptance of cancellation in favour of the petitioner.

16. In this connection, it is relevant to notice the various provisions of the Representation of the People Act and also the various Rules as applicable to the facts of this case. Part V of the Representation of People Act deals with conduct of elections. Chapter 1 provides for nomination of candidates. Sec. 30 provides for appointment of dates for nominations. Sec. 31 provides for public notice of election. Sec. 32 provides for nomination of candidates. Sec. 33 provides for presentation of nomination paper and requirements for a valid nomination. Sec. 34 provides for deposits. Sec. 35 provides for notice of nomination. Sec. 36 provides for scrutiny of nominations. Section 36 (5) provides for adjournment of scrutiny when proceedings are interrupted or obstructed by riot or open violence or by causes beyond his control. It further provides for allowing time to rebut it not later then the next day but one following the date fixed for scrutiny. Rules have been framed in this regard. Rule 13 (A) provides for specification of a candidate by a political party. In fact this very issue came up for consideration before the Supreme Court in the case of Rakesh Kumar Vs. Sunil Kumar (1999) 2 SCC 495, on which a very strong reliance is placed by the petitioner. The Supreme Court after noticing this proviso has stated in para 13 as under;

"A Conjoint reading of the aforesaid provisions, inter alia, shows that after the amendment of Sec. 33 (1) of the Act, a nomination paper of a candidate in order to be valid must be;

1. Where the candidate is set up by a political party;
2. Contain a declaration by the candidate to the effect that he has been set up by a recognised political party;
3. Be supported by a notice (Forms A and B) duly signed by the president. Secretary or any other office bearer of the party duly authorised by the party to send such a notice; and
4. The name and specimen signatures of such a authorised person are communicated to the Returning Officer of the constituency and to the Chief Electoral Officer of the State, not later than 3.00 PM on the last date for making nominations.
   (ii) Where the candidate is not set up by a recognised political party, his nomination paper shall be valid only if it is subscribed by ten proposers, being electors of the constituency."

17. Therefore what is clear to this court is when a candidate is set up by a political party the nomination is to be supported by a notice in Forms A and B duly signed by the President. In the case on hand, there is no difficulty in as much as Forms A and B have been submitted to the Returning Officer. Form-B earlier filed by respondent No. 6 was rescinded in terms of Form B issues to the petitioner. Subsequently, at 2.59 PM respondent No. 6 filed one more Form-B rescinding the Form B issued in favour of the petitioner. Further petitioner produced Form-B in which the president rescinded Form -B issued in favour of one Prabhu R. Prasad. At the time of scrutiny, what was available for scrutiny was Form-B submitted by R-6 rescinding the earlier Form-B issued in favour of the petitioner. The same was produced at 2.59 P.M. After seeing this, petitioner filed an application seeking 24 hours time. The returning officer after a careful study of the application made by the petitioner came to the conclusion that

giving 24 hours time to the petitioner does not serve any purpose as there was no provision to accept any further information on Form-B after 3.00 PM on the last day of filing nomination papers either from the authorised person or from the party president. The Returning Officer has ruled as under;

"Smt. Leela Devi R. Prasad was the first person to file her nomination papers from 209 Athani Assembly Constituency as the candidate set up by Janata Dal (United). She has filed two nomination papers on 20-8-1999. She has produced from A and B on 21-8-1999 in support of her claim. Sri Laxman Savadi has filed two nomination papers on 23-9-99 as Janata Dal (U) candidate and produced from B on 24-8-1999 at 2.45 PM in support of his claim. In this B form, the notice in B form given earlier in favour of Smt. Leeladevi R. Prasad as parties approved candidate has been rescinded. She produced another B form at 2.59 PM just a minute before the closing time which mentioned herself as the approved candidate and rescinded the notice in form -B given earlier in favour of Sri Laxman Savadi. At the same moment Sri Laxman Savadi came to the table of Returning Officer and submitted one more B form with himself as approved candidate. On examination of this B form it is noticed that it rescinds earlier B form given in favour of one Sri Prabhu R. Prasad. Hence the B form submitted by Smt. Leeladevi R. Prasad at 2.59 PM did not get rescinded. To conclude one B form submitted by her has been rescinded and another B form submitted by her on 24-8-1999 at 2.59 PM remains intact. About B forms submitted by Sri Laxman Savadi, one B form submitted at 2.45 PM on 24-8-1999 gets rescinded where as another B form submitted by him at 2.59 pm remains intact which happens to be the last B form received by me before the stipulated time."

18. The Returning Officer after noticing para 13 of the Election Symbols Order (Reservation and Allotment) 1968, has ruled that R-6 first delivered to him the nomination papers hence he treated her as the candidate set up by the Janata Dal (United). The argument of the petitioner is that rejection of time resulted in improper rejection of the nomination of the petitioner. Learned counsel strongly relies on Sec. 100 (1) (c) to contend that a case is made out for improper rejection of the nomination in the light of refusal to grant time to rebut respondent's case. It is also pointed out that once improper rejection is proved, election is to be declared as void. Let me see as to whether this legal contention in the given set of facts is acceptable or not.

18. See 100 (1) (c) comes to the aid of a candidate only in the event of improper rejection. Learned counsel for the respondent would say that rejection of time is proper in the light of Rule 13. It is also pointed out that provisions are to be read in the light of the main section itself. It is no doubt true that grant of time is not available in all circumstances. Adjournment is available only when proceedings are interrupted of obstructed by riot or open violence or by causes beyond his control. It is not the case of anybody that proceedings were interrupted by riot or open violence. It is the case of the petitioner that for causes beyond the control of the Returning Officer the proceedings require to be adjourned. This argument of the petitioner is to be accepted because the President of the political party has chosen to issue Form-B to both the candidates without rescinding the Form-B issued in favour of R-6 which is produced at 2.59 PM. Therefore the petitioner is right in seeking time on the ground of causes beyond control. This argument cannot be said to be an unacceptable argument. Therefore petitioner is justified in seeking time. What is to be seen next is as to whether the rejection is proper or not. If the rejection is not proper then the consequence would be improper rejection of the nomination itself. In this regard, it is to be noticed that the returning officer may allow time not later than the next day but one. This very question was considered by the Supreme Court in 1999 (2) SCC 497. The Supreme Court has ruled in para 20 and 21 as under;

"20. Through the proviso, the legislature has provided that in case an objection is raised during the scrutiny to the validity of a nomination paper of a candidate, the Returning Officer may give an opportunity to the candidate concerned to rebut the objection by giving him time "not later than the next day". This is in accord with the principles of natural justice also. In the present case, the respondent had sought an opportunity to meet the objection, but even if had not sought such an opportunity, the returning officer ought to have granted him time to meet the objection in the interest of justice and fair play.

21. The Returning Officer would have been justified in rejecting the nomination paper of the respondent, had the respondent not sought an opportunity to rebut the objection within the time allowed by the Returning Officer. Since the respondent had by his written application filed at the time of scrutiny of the nomination paper itself claimed to be the official candidate set up by the BJP, which claim was not disputed by anyone else during the scrutiny, and had sought time 23 hours to provide relevant material in support of his submission, it was obligatory on the part of the Returning Officer to allow time to him to

rebut the objection suo-motu raised by the Returning Officer. Having raised the objection suo-motu, the request of the respondent who was present and sought time in writing to seek clarification from the BJP as to who was its official candidate, the Returning Officer in all fairness was obliged to grant time to the respondent as prayed for by him and postpone the scrutiny to the next day but he ought not to have rejected his nomination paper in haste. The Returning Officer, obviously, failed to exercise his jurisdiction under Sec. 36 (5) of the Act properly and thereby fell in a grave error in rejecting the nomination paper of the respondent. The learned Single Judge of the High Court was, therefore, perfectly justified in holding that the nomination paper of the respondent had been wrongly and illegally rejected, thereby rendering the election of the returned candidate as void. The impugned order, thus, suffers from neither a jurisdictional defect nor any other error whatsoever".

19. Strong reliance is placed on Sec. 36 (5), Rule 13 and the judgement of the Supreme Court to contend that the rejection order for time is unsustainable in law. At the out set, the said argument of the learned counsel for the petitioner is attractive, but as rightly pointed out by learned counsel for the first respondent this judgement has to be considered in the given set of facts and circumstances. That case according to the learned counsel was pre 13 (A) and post -13 (A) stands on a different footing. Rule 13 (A) has been introduced after the said judgement. The said rule has been introduced to remove any doubt in the matter. In the case on hand Ex. P-4 provides for rescinding in favour of respondent No. 6 and Ex. R-2 provides for rescinding in favour of the petitioner. It is filed at 2.59 PM. It is rightly decided by the returning officer that there is no need to grant time. When the law is clear that in such cases, the first delivered form has to be accepted and hence no fault can be found with the Returning Officer. The Returning officer has rightly decided to accept Form-B submitted by the sixth respondent in the light of Rule 13 (A). Therefore the petitioner's contention of improper rejection in the light of refusal of time cannot be accepted. The judgement of the Supreme Court if read would show that the Supreme Court has accepted the violation theory in the absence of Rule 13 (A). The Supreme Court ruled that time ought to have been giving to rebut the objections raised by the Officer. He could have been given 24 hours time to do so within 24 hours but to deny him such an opportunity in the facts and circumstances of this case was neither fair nor proper. This finding has to be understood in the light of non- availability of Rule 13 (A). Now no time for rebuttal is needed in the light of the clear law in terms of Rule 13(A). This judgement has to be understood on the facts of this case and it cannot be applied without reference to subsequent case and the facts of the subsequent case. Therefore in my view the said judgement cannot be pressed into service since the facts of this case stand on a different footing. I am unable to accept the argument of the learned counsel for the petitioner that rule 13 (A) does not make any deviation in the matter. The argument that Sec. 36 (5) provides for time is to be understood in the light of Sec. 13 (A). If so understood, the petitioner's case has to fail on the facts of this case.

20. A serious argument was advanced by the learned counsel for the respondent is that what is rejected are only Form-B and it cannot be understood as rejection of nomination. Nomination without Form-B is no nomination at all. The nomination paper is submitted in Form-2 B in terms of Rule 4 of the Rules. Therefore this contention cannot be accepted. In fact the judgement of the Supreme Court would show that in identical circumstances, the Supreme Court noticed the rejection of Form B as rejection of the nomination paper.

21. Learned counsel for the respondents also raised a plea that the right to contest is a statutory right and not any constitutional right. I do not want to go into this matter in the light of my earlier finding in this regard.

22. In the issues framed, it is seen that the returning officer has acted with bias and prejudice but no acceptable argument or for that matter no argument is placed accusing respondent No. 7 in this regard. Moreover, in these circumstances, the rejection cannot be said to have resulted in material irregularity in the conduct of election. Petitioner has failed to prove that the refusal of his prayer for postponement is illegal and has resulted in irregularity. Petitioner has also failed to show that Respondent No. 7 acted with bias and prejudice. Petitioner is also unable to show in terms of the law governing the matter that Form-B submitted by respondent No. 6 is unsustainable and that he is the authorised candidate of JD (U). All these issues are answered against the petitioner and in favour of respondent No. 6 Parties have not addressed any argument with regard to any other issue. Having come to this conclusion, issue No. 9 is to be answered against the petitioner. In so far as issue No. 12 is concerned, it cannot be said that the petitioner has not approached this court with clean hands and that the respondent No. 1 has not proved this issue in his favour resulting in exemplary costs.

23. In these circumstances, petition stands rejected. Parties are to bear their respective costs.

FORMAL ORDER
IN THE HIGH COURT OF KARNATAKA AT BANGALORE
DATED THIS THE 20th DAY OF MARCH 2003
BEFORE
THE HON'BLE Mr. JUSTICE R. GURURAJAN
ELECTION PETITION No. 3/ 1999

BETWEEN

1. Laxman Sangappa Savadi,
Age: 39 years, Occ: Agriculture, ...PETITIONER
R/o. Naganur P. K. Taluk Athani, Dist: Belgaum.
(By Sri S. M. Patil (Ankalgi) Adv., Sri Jagadish Patil, Sri Ravivarma Kumar Adv.,)

AND

1. Dongaragaon Shahajan, S/o. Ismail,
Age: Major, Occ: Agriculture,
R/o Hotahalli, Taluk Athani, District Belgaum.
2. Gangaram Balu Sataputs,
Age: Major, Occ: Agriculture,
R/o. Sambaragi, Taluk Athani, District: Belgaum.
3. Jyothirao Banthi,
Age: Major, Occ: Agriculture,
R/o. Harogeri, Taluk Raibag, Dist: Belgaum.
4. Patil Basavaprabhu Lakhagouda,
Age: Major, Occ: Agriculture,
R/o. Malabag, Taluk Athani, District: Belgaum.
5. Ravindra Dhanavant Halingali,
Age: Major, Occ: Advocate,
R/o. Telasanga, Taluk Athani, Dist: Belgaum
Now at Hulyalakargalli, Jamakhandi.
6. Leeladevi R. Prasad,
Age: major, Ex- Minister,
R/o. Talsana Medical Stores Main Road, Athani,
Now at Bangalore-4 , Sadashivanagar.
7. The Returning Officer,
209, Athani, Assembly constituency Athani, Belgaum Dist. ....RESPONDENTS

(By Sri R. Sharathchandra For R-3
Sri B. S. Subbramaiah R-6
Sri Tajuddin, HCGP For R-7
Sri K. Anand Kumar For R-2
Sri C. B. Srinivasan and A. K. Vasanth and
V. P. Kulkarni For R-1
R-4 and 5 Served)

The Election is filed U/s 81 of representation of people Act 1951 by the petitioner candidate at 1999 General Election to the Karnataka Legislative Assembly Constituency No. 209, Athani Assembly Constituency held on 7-10-1999 to declare that the election of Respondent No. 1 to the House of Assembly is null & void and set aside the same, etc.,

This Election petition coming on for evidence from 19-2-2001 to 20-3-2001 and for arguments between 2-4-2001 and 13-2-2003 and for pronouncement for order on 20-3-2003 in the presence of Sri. Ravivarma Kumar, S. M. Patil (Ankalgi) and Jagadish Patil, Advs., for petitioner, and Sri C. B. Srinivasan and A. K. Vasanth and V. P. Kulkarni for Respondent No. 1 and Sri K. Anand Kumar for Respondent -2 and Sri R. Sarath Chandra for Respondent -3 and Sri B. S. Subbramaiah for Respondent -6 and Sri Tajuddin, HCGP for Respondent -7 and Respondents 4 & 5 are served but remain un-represented, and that for the reasons stated in the Order, it is ordered and decreed that the Election petition be and the same is hereby dismissed and parties are to bear their respective costs.

Registrar (Judicial),

P. R. 64

By Order,
TAPAS KUMAR
Secretary,
Election Commission of India.

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi- 110 001.

NOTIFICATION

ಸಂಖ್ಯೆ: ಸಿಆಸುಇ / 3/ ಚುತಅ/ 2000, Dated: 29th August 2003

No. 82/ KT-LA/15/99/2003,- In Pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the Judgement/ Order of the High Court of Karnataka Bangalore, dated 16-4-2003 in Election Petition No. 15 of 1999.

IN THE HIGH COURT OF KARNATAKA, BANGALORE

DATED THIS THE 16th DAY OF APRIL 2003

BEFORE

THE HON'BLE Mr. JUSTICE R. GURURAJAN

EP No. 15 OF 1999

BETWEEN

1. C. Veerabhadraiah
   S/o. Channaveerappa, No. 72. YRS.
   B. H. Road, Tumkur. ......PETITIONER (S)
   (By Sri Mahesh R. Uppin Adv.,)

AND

1. C. Channigappa,
   S/o. Channarayappa, Age: Major,
   At present M. L. A. Legislative Home, Bangalore.
2. Andanappa
   S/o. Byrappa, Age: Major,
   Parwathi Nagar, Laggere Main Road, Bangalore.
3. Jayanthi
   Age: Major, W/o. D. Balasubramanya,
   No. 873, 19th Main Road, Banashankari II Stage, Bangalore- 70.
4. Aradhya,
   Age: Major, S/o. Lingaiah,
   No. 140, 4th Main Road, 5th Cross, Manjunatha Nagara,
   2nd Stage, Rajajinagar, Bangalore.
5. R. Prakash
   Age: Major, S/o. N. Ramaiah, Garden House, Mahimapura,
   Tyamagondalu Hobli, Nelamangala Taluk.
6. Veeranna,
   Age: Major. S/o. Kamanna,
   Ex. Minister, Koratagere Town. ....RESPONDENT (S)
   (By Sri D. L. Jagadeesh & A. S. Mahesh)

This petition is filed praying to declare Annexure-A as void and to take Action u/s 100 (2) of the Representation of Peoples Act 1951.

This Petition having been reserved for orders, coming on for pronouncement this day, the court pronounced the following;

ORDER

Petitioner has filed this election petition seeking for the following prayers;

(i) Declare declaration made by the Returning Officer as contained in Annexure-A declaring first respondent as the elected candidate from 56 Koratagere Legislative Assembly Constituency as void on the ground of section 100 (1) (b) (ii) (iii) (iv) of the Representation of People Act- 1951.

(ii) To take action under Sec. 100 (2) of Representation of Peoples Act 1951 in case the court found guilty of corrupt practices.

(iii) To declare the petitioner as elected after recount after excluding the votes obtain by the first respondent by corrupt practice.

(iv) In the alternative, direct re- count of votes in respect of 56 Koratagere Legislative Assembly Constituency and declare the petitioner as elected in case the petitioner secures the maximum number of votes among contesting candidates after recounting as per Sec. 101 (b) of Representation of People Act. 1951. Etc.,

Facts;

Petitioner and the respondents 1 to 6 were contesting candidates from 0.56 Koratagere Legislative Assembly Constituency Tumkur District for the 11th Karnataka Legislative Assembly General Election held on 5-9-1999. Petitioner contested on Indian National Congress (I) ticket. First respondent contested on Janatha Dal (Secular) ticket. The second respondent contested on BJP ticket. The third respondent Smt. Jayanthi contested on Jantha Dal (U) ticket. Respondents 4 to 6 contested independently. on 7-10-1999 the first respondent was found to have secured highest votes and he was declared as elected by the returning officer in terms of Annexure-A. Petitioner states that the first respondent used unfair means and adopted corrupt practice to secure more votes in the election. Petitioner states that the difference of votes between the petitioner and the first respondent was only 706.

2. During the election campaign, the first respondent and his supporters resorted to goondaism to threaten the other candidates, their agents, supporters and the voters. On 2-9-99, at Agalaguppe village, Nelamangala Taluk, Koratagere constituency, at about 9 PM when third respondent was returning after completing her election campaign, the supporters of first respondent stopped her car. They attacked the canvassing vehicles of the third respondent. They assaulted one Babu. They dragged Smt. Shylaja from her car and forcibly pulled her hair and took away her Mangalya chain. FIR was filed in that regard. It was also reported in papers. A sort of terror and panic was created by such kind of activities of the first respondent.

3. The first respondent, his agents and the President of Taluk Janata Dal (S) published and distributed various kinds of Pamphlets while canvassing, for the first respondent with the consent of the first respondent. Some of them are produced at Annexures-C and D. In Annexure-C the photo of his holiness Sri Sri Shivakumara Swamigalu of Siddaganga Muth and also the photo of His Holiness Jagadguru Sri Balagangadharanath Swamiji of Adi Chunchanagiri Muth were prominently printed along with the leaders of Janatha Dal (S). In Koratagere Constituency majority of the voters belong to Veerashiva or Lingayath Community and Vokkaliga Community. Sri Shivakumar Swamigalu is the head of Sri Siddaganga Muth which belongs to Veerashiva Religion and he is highly respected and regarded as a symbol of sacrifice and devotion in the cause of up-liftment of the poor and also in the cause of providing free education with free boarding and lodging facilities to thousands of children coming from various part of the state. He is respected and revered religious head of Veerashiva Religion. He is regarded as moving God on earth by his devotees. His photos are adorned in majority of households in Koratagere Taluk. His photo has become a religious symbol of Veerashiva community. Sri Jagadguru of Adi Chunchanagiri Muth is recognised, respected and revered religious head of the Vokkaliga Community in the State. During his long tenure as a Jagadguru, he has united the Vokkaliga Community and established various educational institutions in different parts of the State. He is a symbol of sacrifice and devotion in the cause of upliftment of the poor and the down trodden and Vokkaligas in particular. His devotees, Vokkaligas in particular worship him and his photos as if he is God for them. The photos of these swamijis in the pamphlets issued by the first respondent or his agents or supporters with the consent and or knowledge of first respondent or his agents amounts to use of religious symbols for the furtherance of the prospect of election of the first respondent and at the same time prejudicially affecting the election of the petitioner or other candidates. The first respondent had appealed to the voters to cast their votes in his favour by use of religious symbols. The first respondent used the photos of the above two Swamijis in the election canvass and as a result of which all or majority of the Vokkaligas and Veerashivas in Koratagere Constituency had supported and voted in his favour. The first respondent in one of the Pamphlets marked as Annexure-D has claimed that he was responsible for carrying out nearly 24 items of work. Such a claim on the part of the first respondent was made to induce the voters to vote in his favour. In fact many of the works were commenced or completed before the first respondent became the MLA on the previous occasion. The first respondent along with the leaders of Janata Dal (S) conducted the election meeting on 31-8-1999 about 11.30 AM at Dobaspet. In the said meeting one Bettaswamy Gowda and Srinivas and others who were members and party workers of Janata Dal (S) and also the agents of the first respondent were present. Former Primer Minister Sri Deve Gowda, addressed the gathering. In the said meeting Sri Bettaswamy Gowda and Sri Srinivas, on the direction of the first respondent distributed Pamphlets to the persons present in the meeting. The said Pamphlets were published in the name of Sri Bettaswamy Gowda and Srinivas with the consent of the first respondent at Nisarga Mudrana, Ramanagar. Annexure-D was printed and published in the name of the President of Taluk Janatha Dal (S) at Nisarga Mudrana Ramanagar. Those Pamphlets were published and distributed in various places in Sompura, Koratagere,

Holavanahalli, Kolal, Tyamgondalu and other places. Pamphlets were distributed house to house throughout the constituency by the first respondent, his agents and supporters. The said Pamphlets were distributed by Agalaguppa Srinivas and other workers at Agalaguppe and Sompura (Dodaspet). On coming to know of this, Sri Siddaganga Muth published a public notice and also wrote to the District Election Officer and Deputy Commissioner on 28-8-99 complaining about the misuse of photo of Sri Sri Shivakumar Swamiji. Thereafter the first respondent wrote to the Math on 30-8-1999 stating that his followers distributed those handbills without his knowledge and he would not conduct himself in a manner so as to bring disgrace to the math. The first respondent had gone to Sri Siddaganga Math and expressed his apology in the matter. By that time almost all distribution work of Pamphlets was over. On 31-8-1999 another election meeting was attended by Former Prime Minister Sri H. D. Devegowda and it was conducted at 4.30 PM in Koratagere town. In that meeting also Pamphlets Annexures-C and D were distributed. One Jayaram of Neelagondanahalli, Sri Mallesh of Yelerampura were present in the said meeting. The Pamphlets were distributed house to house in Agalaguppe and Sompura on 23rd and 24th of August 1999. The said distribution was witnessed by Sri B. N. Paramesh of Borgenahalli and Sri Hanumaiah of Goraghatta. In addition, the said distribution of Pamphlets took place throughout Koratagere Constituency and also Chikkaballapur Parliamentary Constituency between 21-8-1999 and 3-9-1999. At that time Sri A. Nagarajaiah S/o. Doddaiah of Arasapura was the Block Congress (I) President of Koratagere Constituency. He was in charge of the election campaign on behalf of the petitioner in Koratagere constituency. Petitioner collected these information from the eye witnesses to these allegations namely B. N Paramesh, Sri Jayaram, Hanumaiah, Mallesh and A. N. Nagarajaiah and others. The first respondent was an MLA in the 10th LA. He got posted by transfer many Government officials in Koratagere Constituency with an ulterior motive. Those officials had assisted the first respondent to impersonify the voters and also to rig the election and to cast votes in various remote places in favour of the First respondent. Anticipating such kind of rigging of votes, petitioner filed a complaint in terms of annexure-E. Annexure-F is another complaint. Annexure-G is the copy of the affidavit of one of the polling agents of the petitioner who was an eye -witness to the connivance of the polling officials in this regard. Petitioner filed an application for recounting from the beginning of all votes and the same was allowed. Partial recounting was conducted and the complaint of the petitioner was found to be correct. The Returning Officer misconstrued the application of the petitioner as an application for the recount of only counting hall No. 5. He did not apply his mind to the fact that the petitioner requested recounting in respect of the whole of Koratagere Constituency. With these allegations petitioner is before me seeking for a declaration declaring the first respondent's election as void on the ground of violation of Sec. 100 (i) (b) (d) (ii) (iii) (iv).

2. Initially the election petition filed did not have a few paragraphs and they were subsequently added in terms of the amendment application being allowed by this court. First respondent has filed amended written statement in the light of allowing of the amendment by this court.

3. First respondent states that the election petition is frivolous and the same is not maintainable. Election petition does not contain necessary averments constituting complete cause of action. It is false to state that the of counting Hall No. 5 only. It is denied that he has used unfair means and adopted corrupt practices of secure more votes in the election. It is denied that during the election campaign the respondent and his supporters had resorted to goondaism to threaten the other candidates. First respondent does not admit the incident of 2-9-1999. FIR is not admitted. Press statement is also not admitted. First respondent denies that his agents or President of Taluk Janata Dal (S) had published and distributed various kinds of Pamphlets such as Annexures-C and D. He denies that these Pamphlets were published with the his consent. It is not admitted that in Koratagere Constituency majority of the voters belong to Veerashiva, Lingayath or Vokkaliga Community. It is not admitted that the photo of Sri Shiva Kumara Swamy of Sri Siddaganga Math and Jagadguru Adichunchanagiri Swamy is the religious symbols of Veerashiva and VK Vokkaliga and other Communities. It is denied that issuance Pamphlets is use of religious symbols for furtherance and prospect of this respondent in the election. He further denies that many of the works referred to in Annexure-D were commenced and completed before this respondent became an MLA. It is denied that the first respondent along with his leaders of Janata Dal (S) had conducted election meeting on 31-8-1999 at Dabaspet. It is denied that former Prime Minister Sri HD Deve Gowda addressed the gathering. It is denied that Bettaswamy Gowda and Srinivas and other on the direction of the first respondent were distributing Annexure-C and D, Pamphlets to the persons present in the meeting. It is denied that the said Pamphlets were published in the name of Bettaswamy Gowda and

Srinivas on the Direction or the consent of the first respondent at Nisarga Mudrana, Ramanagara. He further denies that he wrote a letter to the muth on 30-8-99 stating that his followers distributed those hand bills without his knowledge and he would not conduct himself in a manner so as to bring disgrace to the Muth. The first respondent has not admitted any one of the allegations made in the Election petition.

4. The earlier Election Judge has framed the following issue.

1. Whether the petitioner proves that the use and depiction of the photographs of His Holiness D. Sri Sri Shivakumara Swamiji of Siddaganga Muth and His Holiness Jagadguru Sri Balagangadharantath Swamiji of Adi Chunchanagiri Math in the pamphlets have influenced the minds of voters of Koratagere Constituency to cast votes in favour of respondent No. 1 Sri Channigappa and such depiction of photographs amounts to religious symbols?
2. Whether the petitioner proves that by means of illegal and unfair act, respondent No. 1 committed corrupt practice with the voters of Koratagere Constituency so as to cast votes in his favour and was able to secure 33558 votes?
3. Whether the petitioner proves that respondent No. 1 his agents and supporters of Janata Dal (S) viz., the President of the Taluk Janatha Dal (S) and supporters have played corrupt practice with the consent of respondent No. 1 appealing to the voters to cast votes in favour of respondent No. 1 by means of using religious symbols of Swamijis in furtherance of his prospectus to get elected in the election by printing, publishing and distributing pamphlets?
4. Whether the petitioner proves that with the aid of the agents and Government officials of Koratagere Constituency, respondent No. 1 played corrupt practice as a result of which rigging of votes had taken place in the polling booths of Holagevanhally, Banmaladevipura, Thumbadi, Chickanahally, Dasarahally and Vaddagere of Koratagere Taluk and Vadagunte Doddabele Govenahally Byadarahally and Jakkanahally of Nelamangala Taluk?
5. Whether the petitioner proves that his request for recounting of the ballot papers was illegally rejected and thereby the petitioner is entitled for recounting the votes?
6. Whether the petitioner proves that the election of the Returning Candidate is liable to be set aside? If so, whether the petitioner has to be declared as an elected candidate?
7. What Order?

Additional Issues:

1. Whether the petitioner proves that the respondent No. 1, his agents and his supporters with his consent and knowledge, committed corrupt practices of goondaism to threaten the other candidates, their agents, supporters, and the voters from canvassing for the petitioner and others and from coming to the booths to cast their votes as detailed in paragraph 5 (a) of the election petition?
2. Whether the petitioner proves that, the respondent No. 1, his agents and supporters with his consent committed corrupt practice by making false statements or representation to voters to the prejudice of other candidates as detailed in para 5 (e) and 6 of the election petition "4. Petitioner examined 11 witnesses as against one witness examined by the respondent. Petitioner filed as many as 21 documents and respondent filed two documents.

5. The first petitioner has given detailed evidence and he has almost reiterated what has been stated in the election petition. He has also stated people of Veerashiva Community believed that Siddaganga Kshetra to be a holy and religious place and the people of Veerashiva Community have full faith in Sri Siddaganga Math Swamiji and all the people in the village have put the photos of the Swamiji in their houses and worship by doing padapooja. The people of Vokkaliga community believe Sri Jagadguru Adicunchanagiri Swamiji to be the God and worship by doing padapooja. On account of printing of photos of these Swamijis, he got less votes. ExP-4 and P5 were the Pamphlets displaying the photos of the Swamijis. These Pamphlets have been distributed throughout the Koratagere Constituency. On display of photograph of Sri Siddaganga Math Swamiji caused a notice to Channigappa questioning him as to how he displayed his photo without his knowledge. Ex. P -6 is the letter addressed by the Administrator of Sri Siddaganga Math to the District Election Officer and to the Deputy Commissioner Tumkur District. The supporters of the first respondent distributed Pamphlets Ex. P4 and P5 seeking votes from general public. On account of display of photographs of Sri Siddaganga Math Swamiji and Sri Balagangadhara Swamiji, he was poled with less votes. He has stated that he has done many improvement works in his constituency. On the day of election first respondent engaged many goondas for rigging of votes in some of the villages of Dabaspet and Thyamangondalu. He has filed Ex. P-13 and

14 with regard to his complaint. He was examined at great length. In cross -examination he has denied several suggestions made to him. He has denied the suggestion that he has falsely deposed with regard to the fear complex created by the first respondent. He has admitted that the first respondent. He has admitted that the first respondent did not attack or made allegations against him but the supporters of the first respondent have attacked Smt. Jayanthi. He has also expressed his ignorance with regard to the goondas engaged by the first respondent. He does not say or call Respondent No. 1 Chennigappa as goonda, but he says that his supporters are goondas. He has denied the suggestion that the first respondent did not print the Pamphlets. He has further denied the suggestion that no Pamphelets were distributed by the first respondent. The entire cross- examination as a whole would show that several suggestions have been made and they have been denied by the petitioner. He has stated that out of many voters. Majority of the voters belong to Veerashiva and Vokkaliga communities he cannot exactly say the total number of voters of the said communities. The people of Veerashiva Community have many maths in Karnataka. There are various sub-castes amongst Veerashiva People. He says that he is not a Pancham Shali which is a sub-sect of Lingayath, but he is a Jangam. He has admitted that people of every sub-caste may be having their own Swamiji. He has denied the suggestion that people of VS Veerashiva community do not worship Sri Siddaganga Math Swamiji. According to him Padapooja is done to the Swamiji. In so far as development work is concerned, he has adduced no evidence in that regard. He has denied the suggestion that Exs. P-4 and P-5 were not printed and published at the instance of the first respondent.

6. PW-2 B.N. Paramesh, is a social worker. He has stated that on 23-8-1999, while he was proceeding towards Hagaluguppe village, Srinivas and supporters of the first respondent were distributing pamphlets which were printed with the Photos of Sri Balagangadhara Swamy and Sri Shivakumar Swamy. On 31-8-1999 he noticed at Dobaspet of wide publicity regarding the election Campaign by the side of the High way and people were telling that former Prime Minister Sri Deve Gowda will be coming for election campaign in favour of the first respondent. He has stated that when the election campaign was going on Bettaswamy Gowda and Srinivas were distributing the Pamphlets Ex. P4 and 5. In the cross - examination he has denied several suggestions made to him. He has stated that he is a Lingayath by community so also the petitioner. He has denied the suggestion that he has given frivolous evidence just to help his community person.

7. PW-3, P. H. Jayaram is the President of Grama Panchayathi. He has stated that he has noticed Dasarahalli Ramesh and the supports of JD (S) distributing hand bills. The hand bills had the Photographs of Sri Shivakumar swamy and Sri Balagangadhara Swamy. He has also denied the suggestions made to him.

8. PW-4 A Nagarajaiah, an agriculturist has stated that he was nominated as the Block President of Congress-I party since 1966-67. During his election campaign on behalf of the pamphlets with the photographs of Sri Shivakumar Swamy and Sri Balagangadhara Swamy by the supporters of the first respondent. In cross-examination he has admitted that he did not give any complaint to the Returning Officer.

9. PW-5 Sri D. S. Chandrashekar, a resident of Dodderi village of Nelgamangal Taluk has stated that impersonation was taking place and he pointed out some persons to the presiding officer of the Polling Station and about 20 persons were arrested as they were casting proxy votes. He has also denied several suggestions made to him.

10. PW-6 Sri Jayaram Raj Urs T. R. Deputy Commissioner Tumkur district, states that he was summoned to produce the statement of expenses filed by the returning candidate namely Chennigappa. Ex.P-17 is the statement. In the said exhibit there was an entry for payment of Rs. 250/- marked as Ex. P-17 (a) towards hand bill printing paid to Basaveshwara Printers, Koratagere. The file containing vouchers is marked as Ex. P-18. In respect of the entry in Ex. P-17 (a) there was a complaint given to him. He issued show cause notices to the case workers and the concerned officials have submitted their replies. He has stated that as per Election Rules, statement of accounts has to be submitted along with the vouchers. His predecessor in office did not find any defect in the statement of accounts.

11. PW-7 Deputy Secretary, Governor Office, Bangalore has stated that Ex.P-9 is an endorsement issued by him after verifying the statement of expenditure that was filed by Chennigappa. At the time of issuing the endorsement, in Ex. P-17 it was written as Nisarga Mudrana, Ramanagara. Now I see that some whitener has been applied and over written as Basaveshwara Printers, Koratagere. He has been cross- examined. He states that the petitioner sought for issuing of certified copy in respect of the

amount paid to Nisarga Mudrana, Ramanagara. Application is at Ex. P-19. He did not find any voucher relating to payment made to Nisarga Mudrana, Ramanagara. He has also referred Ex. R-1 and R2 in his evidence.

12. PW-8 Shivakumaraswamy, is a Retired professor of Sanskrit, Bangalore University. He has stated that he has written certain books on Veerashiva Religion and other Sanskrit Literature. He has made some research in the area of religion and he is well acquainted with the concepts of Hinduism. As per the basic concepts of Hinduism "guru" is regarded as an incarnation of God. There are certain texts regarding Veerashaivaism. The texts like Agama, Siddantha Shikamani and Vacahana litreture say "guru", "Linga" and "Jangama' are equal. The status "Guru" is the highest in Hindu Society among Asthikas. The "Gurujis" are worshipped among the Hindus with high status and the people invite them to their house and worship them by doing "padapooja". After seeing Ex P4 and P5 he has stated that these two swamijis command highest status of Guru and are being worshipped by the followers. He has stated that he has no personal experience so as to say whether these Swamijis have power of doing miracles by way of devotion to create any wealth or health to the people. According to Shastras and Traditions, Swamijis are treated as God and equivalent to God.

13. PW-9 Jayaramarajurs, Deputy Commissioner of Tumkur District. He was summoned to produce the application dated 6-10-1999. He has stated that he could not find it out and produce the same before the court.

14. PW-10 Sri B. M. Shivaprakash, the RO for the 11th LA Elections for KC has stated that he ordered counting of votes for the entire rounds in room No. 5. He has been cross - examined.

15. PW-11, HD Ramakrishnaiah, Police Inspector, identifies Ex. P-21. In the cross- examination, he has stated that he has not mentioned the time in so far as the meeting held in the presence of Former Prime Minister Sri H. D. Deve Gowda.

16. RW-1 C. Channigappa, has stated that he contested the election and was declared as elected by a margin of 706 votes. Neither the police nor any of the candidates contested against him have filed any criminal petition against him or his party workers in respect of the election campaign. He is not a party for Exs. P-4 and P-5. Sri Siddaganga Math Swamiji sent a letter to the President of the Janatadal (S) party as per Ex. P-6. Immediately he approached the Swamiji along within his party workers and clarified that he has not used the photos of the Swamijis in the pamphlets and distributed them. He has also written a letter addressed to the Swamiji of Sri Siddaganga Math. The Mutt authorities have addressed a letter to the District Returning Officer as per Ex. R-1 stating that he has not violated any election rules. In Ex. R-2 the last two lines have been struck off. He has denied the other allegations made against him. He states that entry in Ex. P-17 are written and maintained by his Accountant. In Ex. P4 it is shown that it is printed at Nisarga Mudrana, Ramanagara. The same appears to have been printed by Hagaluguppe Bettaswamygowda Srinivas. He does not know whether Srinivas is the very same person who is charge sheeted in Ex. P-15. The total expenses that he has shown in Ex. P-17 was for Rs. 2,26,747/-. He has not specifically shown the amount of expenses incurred towards printing. AT Ex. P-17 it is shown that Rs. 250/ has been incurred towards printing expenses. It is true that some overwriting has been done by applying whitener at page No. 7 and written as Basaveshwara Printers, Koratagere. He has denied that the PH were printed at his instance at Nisarga Mudrana, Ramanagara. He has also denied various suggestions made to him. He has stated that it is not correct to state that Ex. P-4 and P-5 were distributed at Agalakuppe and Dobaspet. He has also stated that it is not correct to suggest that the people of Koratagere Constituency have believed that both the Swamijis ae equivalent to God. In Ex. P-4 and P-5 his photos are printed and it also bears the symbol of his party.

17. Sri Vijaya Shankar, learned Senior Counsel appearing for the petitioner and Sri B.L. Acharya, learned Senior counsel for the contesting respondent, have addressed elaborate arguments on various dates. Parties have concentrated only on the Corrupt practice by use of Religious Symbols or appealing to the voters in terms of religious symbols for furtherance of elections. They have also addressed arguments with regard to corrupt practice in terms of Election Laws. They have referred to various judgements.

18. Sri Vijaya Shankar, learned Senior Counsel took me through the pleadings in the case on hand. He refers to me the provisions of Representation of People Act. According to the learned counsel, the elected candidate has committed corrupt practice in terms of Sec. 123 of the Act. He refers to Ex. P-4 and P-5 to contend that a reading of these documents would show that an appeal has been made to the voters by the first respondent for furtherance of his election. He further says that the photos of the

Swamijis are nothing but religious symbols as understood in law. He contends that his court in this case has to draw an inference based on the material available on record. The constituency is full of Lingayatha and Vokkaligas and these two Swamijis represent these two sects and therefore according to the learned senior counsel, a case of corrupt practice is made out.

19. In so far as printing is concerned, he refers to me the various dates of evidence to show that these two pamphlets were printed at the instance of the first respondent. He refers to me the object of free and fair election without any religious bias for a proper democracy. He refers to me the judgement of the Supreme Court to contend that religion cannot be inducted into politics.

20. Learned counsel also refers to me a book written by Edgar Thurston. He states that these two Swamijis are worshipped as God and those pictures were made use of and an appeal has been made on a religious basis. The evidence on record read with the pleadings would show that corrupt practice has been followed by the respondents. Though allegations of rigging and undue influence has been raised not much of argument has been placed by the learned counsel. Ultimately, he concludes by saying that if corrupt practice is proved, then he has to succeed in the case on hand.

21. Per contra, Sri Acharya, learned Senior Counsel appearing for the respondents took me through the pleadings to contend that initially no material was placed with regard to corrupt practice. It is only by way of amendment better details are forthcoming in the petition. He refers to the application for amendment to contend that petitioner had no knowledge and his knowledge is through other persons in terms of the application. In so far as corrupt practice is concerned, learned counsel would say that the same is not proved in the case on hand. A mere photograph by itself without there being any additional material cannot, according to the learned counsel would amount to corrupt practice in terms of the election laws. He refers to me various judgements of the Supreme Court to contend that this case deserves to be dismissed. In so far as printing is concerned, he invites my attention to the evidence on record to show that the role of the first respondent is not proved in accordance with law. He refers to me the evidence in detail. In conclusion he wants this petition to be dismissed.

22. In reply learned counsel for the petitioner again refers to various material piece of evidence to contend that a case is made out before me.

23. Both the learned Counsel have referred to various case laws and I would be considering them at appropriate places.

24. Before I give my findings on each issue, let me see as to what the Supreme Court has stated with regard to religion and use of the religious symbols in elections.

Findings on religion and use of religious symbols in terms of the constitution by court of law.

25. The Constitution of India provides for establishment of a Secular, Social and Democratic Republic. Sec. 100 of the Representation of People Act provides the grounds for declaring the election to be void. Sec. 100 says that if the High Court is of the opinion that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent, the High Court shall declare the election of the returned candidate to be void.

26. Section 123 (3) defines the term "Corrupt Practice" as under;

"The appeal by a candidate or his agent or by any other person with the consent of a candidate or his election agent to vote or refrain from voting for any person on the ground of his religion, race. Caste, community or language or the use of or appeal to religious symbols or the use of, or appeal, national symbols, such as the national flag or the national emblem for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate.

27. The Supreme Court in AIR 1965 SC 141 has ruled in para 7 as under.

"The corrupt practice as prescribed by Sec. 123 (3) undoubtedly constitutes a very healthy and salutary provision which is intended to serve the cause of secular democracy in this country. In order that the democratic process should thrive and succeed, it is of utmost importance that our elections to Parliament and the different legislative bodies must be free from the unhealthy influence of appeals to religion, race, caste, community or language. If these considerations are allowed in any way in election campaigns, they would vitiate the secular atmosphere of democratic life, and so, Sec. 123 (3) wisely provides a check on this undesirable development by providing that an appeal to any of these factors made in furtherance of the candidature of any candidate as therein prescribed would constitute a corrupt practice and would render the elections of the said candidate void."

28. The Supreme Court in AIR 1975 SC 1788 has ruled as under;

"11. Our Constitution makers certainly intended to set up a Secular Democratic Republic the binding spirit of which is summed up by the objectives set forth in the preamble to the Constitution. No democratic political and social order in which the conditions of freedom and their progressive expansion for all make some regulation of all activities imperative, could endure without an agreement on the basic essentials which could unite and hold citizens together despite all the differences of religion, race, caste, community, culture, creed and language. Out political history made it particularly necessary that these differences, which can generate powerful emotions, depriving people of their powers of rational though and action, should not be permitted to be exploited lest the imperative conditions for the preservation of democratic freedoms are disturbed."

Therefore what is clear to me is that election is to be contested without mixture of religion in politics to maintain secular fabric of our constitution.

I. Findings on issues 1 to 3.

(a) Pleadings / evidence Reg: Religious symbols

29. A common finding can be given in respect of these issues. If issues 1 to 3 are read together it is seen that according to the petitioner, Corrupt practice is adopted by the first respondent by use and depiction of the photographs of Swamijis in the pamphlets and those pamphlets have influenced the minds of voters of Koratagere Constituency to cast votes in favour of respondent No. 1 The further issue would show that the said corrupt practice is with the consent of respondent No. 1 appealing to the voters to cast votes in his favour by means of using religious symbols of Swamijis in furtherance of his prospectus to get elected in the election by printing, publishing and distributing pamphlets.

30. According to the pleadings the first respondent, his agents and the President of Taluk Janata Dal (S) published and distributed various kinds of pamphlets while canvassing for the first respondent with his consent. These are Exhibits P-4 and P-5. His holiness Sri Siddaganga Muth belongs to Veerashiva Religion and Sri Adichunchanagiri Muth belongs to Vokkaliga Community. In Koratagere constituency majority of the voters belong to veerashiva or Lingayath Community and Vokkaliga Community. It is further stated that these two Swamijis are highly respected and regarded as a symbol of sacrifice and devotion in the cause of upliftment of the poor and also in the cause of providing free education with free boarding and lodging facilities to thousands of children coming from various parts of the state. It is further stated that they are regarded as moving God on earth by their devotees. The photos of these Swamijis in the pamphlets issued by the first respondent or his agents or supporters with the consent and or knowledge of the first respondent or his agents amounts to use of religious symbols for the furtherence of the prospect of election of the first respondent and at the same time prejudicially affecting the election of the petitioner or other candidates. The first respondent stated in the amended statement that these allegations are far from truth. He further says that mere depiction of photos by itself does not amount to religious symbol. He has denied corrupt practice.

31. PW-1 the petitioner has been examined as witness in the case on hand. He has reiterated what has been stated in the election petition. He states in his evidence that Exs. P-4 & 5 are the pamphlets and on these pamphlets the photos of the Swamijis were displayed. He further says that the first respondent was question by the Math authorities with regard to circulation of the pamphlets with the photos of the Swamiji without the Swamiji's permission. In cross-examination it is elicited by the respondent that there are other lingayath sects available in the constituency. It is also elicited that the people invite these Swamijis to their house and do pada pooja.

32. PW-8 Shivakumarawamy, is a Retired professor of Sanskrit, Bangalore University. He has been examined as an expert witness. He has stated that he has written certain books on Veerashiva Religion and other Sanskrit Literature. He has made some research in the area of religion and he is well acquainted with the concepts of Hinduism. As per the basic concepts of Hidnusim. 'Guru' is regarded as an incarnation of God. There are certain texts regarding Veerashivaism. The texts like Agama, Siddantha Shikamani and Vacahana litreture say "Guru" "Linga" and "Jangama " are equal. The status "Guru" is the highest in Hindu society among Asthikas. The "Gurujis", are worshipped among the Hindus with high status and the people invite them to their house and worship them by doing "padapooja". In cross-examination he has stated that these two Swamijis command highest status of Guru and are being worshipped by the followers. He has stated that he has no personal experience so as to say whether these Swamijis have power of doing miracles by way of devotion to create any wealth or health to the people. According to Shastras and Traditions, Swamijis are treated as God and equivalent to God.

33. At this stage it is also relevant to notice Ex. P-4 & 5. Ex. P-4 is a pamphlet in which the photos of Former Prime Minister Sri H. D. Deve Gowda, Sri S. R. Bommai - former Chief Minister and the photos of Sri Balagangadhara Swamy and Sri Shivakumara Swamy and others are shown. On the reverse side of Ex. P-4 photos of Sri Balagangadhara Swamy and Sri Shivakumara Swamy are shown. In Ex. P-5 only three pictures are shown, namely the two swamijis and Sri H. D. Devegowda. It has also come in evidence of RW-1 that these two Swamijis are respected and regarded for their social service. He has denied that they are treated as God. Let me see as to whether mere depiction of photos of the Swamijis are religious symbols, as understood in law.

34. It is fairly admitted before me that Lingayath Community come within the fold of Hindu Community. In fact PW-8 also does not say that Lingayaths are different from Hindus. Pleadings also do not show that Lingayaths are different from Hindus. In the book written by Edgar Thurston 'Castes and Tribes of Southern India' there is a reference to Lingayath Community. This book has been referred to by the Supreme Court in AIR 1989 SC 1359. A reading of the evidence of PW-8 in the light of the book would show that the Gurus of Lingayaths play a dominant role in the religious affairs of Lingayaths. They are also worshipped by Lingayaths. There is no specific finding in the said book or in evidence that the photos of these two Swamijis can be treated as Religious symbols. Sri Vijaya Shankar, learned Senior Counsel wants me to draw an inference on the basis of evidence of PW-8 and the book. Evidence on record is not clear enough to give a categorical finding with regard to these photos becoming religious symbols in law. No religious head of either of these communities has been examined in support of the plea of the petitioner. All that PW-8 says that these Gurujis are respected. Respecting their Guru is different from treating them as Religious Symbol. Religious Symbol stands on a different footing than having regard and respect to a religious head. In the absence of any acceptable evidence forthcoming, it cannot be said that mere photos of these two swamijis can be treated as a Religious Symbol in terms of the Representation of the People Act. Taking into consideration the seriousness of the charge of corrupt practice, acceptable and substantial evidence has to be placed by a party complaining about the use of Religious Symbol. In the case on hand, evidence is lacking to prove the factum of photos of these two Swamijis becoming ' religious symbol'. Sri Vijaya Shankar, learned Senior Counsel however refers to me that corrupt practice can be inferred from proved facts and circumstances. When the very foundation of corrupt practice is not properly established, it is not possible for this court to draw any inference on such shaky foundation. At this stage, I must also notice case laws on the subject.

35. AIR 1965 SC 141 is a judgement of the Constitutional Bench of the Supreme Court. That was a case in which the Court was considering as to whether publishing and distributing a poster Ex. P-10 would amount to corrupt practice. In fact Sri Vijaya Shankar, learned senior counsel repeatedly read to me the observations at para 8 to contend that the courts should not be astute to read into the words used in the appeal anything more than can be attributed to them on its fair and reasonable construction. Sri Acharya, learned Senior Counsel would say that 'astute' does not mean blind acceptance. In the said case, the Supreme Court as I mentioned earlier, was considering Ex. P-10 a poster issued by the elected candidate. The High Court allowed the election petition. The Supreme Court in para 14 ruled that the view taken by the High Court is inconsistent with a fair and reasonable construction of the impugned poster. It is further ruled that it is an elementary rule of construction that the same word cannot have two different meanings in the same document, unless the context compels the adoption of such a course. The Supreme Court further ruled that the word "panth" in the poster does not mean Sikh religion. Even if it is taken to be a fair and reasonable construction, even then material must be available on record to give a finding on corrupt practice.

36. The Supreme Court again in AIR 1975 SC 1788, has ruled in para 12 as under;

"12. It seems to us that S. 123 Sub- Secs. (2) (3) and (3A) were enacted so as to eliminate, from the electoral process, appeals to those divisive factors which arouse irrational passions that run counter to the basic tenets of out Constitution, and indeed of any civilized political and social order. Due respect for the religious beliefs and practices, race, creed, culture, and language of other citizens is one of the basic postulates of our democratic system. Under the guise of protecting your own religion, culture, or creed you cannot embark on personal attacks on those of others or whip up low herd instincts and animosities or irrational fears between groups to secure electoral victories. The line has to be drawn by the courts between what is impermissible and what is prohibited, after taking into account the facts and circumstances of each case interpreted in the context in which the statements or acts complained of were made."

37. In AIR 1965 SC 183, a Constitutional Bench was considering corrupt practice in terms of Sec. 123 (3). In para 5 the court noticed the following two questions;

"(1) whether a religious symbol was used in the course of election by the appellant, his agents or other persons with his consent in furtherance of the prospects of his election and,

(2) Whether appeals were made to the electorate by Sidhanti, his agents or other persons with his consent to vote in his favour on account of his language and to refrain from voting I favour of Daulta on the ground of his language."

and ruled as under;

"If the evidence on record fails to establish the responsibility for the use of or appeal to the religious or national symbols by the returned candidate or by his consent or his election agent no ground for setting aside the election may be deemed to be made out."

38. In AIR 1960 SC 148, the Supreme Court was considering the scope of Sec. 123 (3). That was a case in which a leaflet was published and that leaflet was an appeal on grounds of religion. The Court on facts in that case ruled as under;

"If an appeal is made systematically to a large section of the electors, as when the left is given a large circulation, it would come within Sec. 123 (3) of the Act.

The Supreme Court also ruled as under;

"If so, it seems equally clear that an appeal that a failure to vote in a certain manner would be against religion, would also be an appeal on grounds of religion. For these reasons we agree with the view of the courts below that the leaflet contained an appeal on grounds of religion."

39. In 1994 SC 1627 the Supreme Court noticed the allegations of corrupt practice of use of religious symbol. The Supreme Court noticed in that case that a candidate of Telugu Desham Party used during the election campaign posters depicting N. T. Rama Rao, the leader of the Telugu Desham Party in the role of Lord Krishna blowing a conch shell. The poster also bore at the top a "Shloka" from Bhagavad Geetha. On the facts of that case, the Supreme Court came to a conclusion that the said offending poster is a religious symbol. The Supreme Court ruled in para 10 as under;

"10. There is no doubt in our mind that the offending poster is a religious symbol. The depiction of anyone be it N. T. Rama Rao or any other person, in the attire of Lord Krishna blowing a Shanku and quoting the words from Bhagavad Geetha addressed by Lord Krishna to Arjuna that his incarnation would be born upon the earth in age after age to restore dharma is not only to a Hindu by religion but to every Indian symbolic of the Hindu Religion. The use by a candidate of such a symbol coupled with the printing upon it of words derogatory of a rival political party must lead to the conclusion that the religious symbol was used with a view to prejudicially affect the election of the candidate of the rival political party.

The Supreme Court again in para 12 rule as under;

"12. The standard of proof in an election petition is regorous, having regard to the quasi - criminal nature of the proceedings. We are not satisfied that upon the evidence before us the charge laid against the successful candidate under Sec. 123 (3) has been establihsed."

40. In 1990 SC 535, the Supreme Court noticed the factum of N. T. Rama Rao being shown as incarnation of God.

41. In ILR 1978 (II Delhi 48) a discussion was made with regard to a picture of Durga Matha seated on a lion.

42. In AIR 1965 SC 669 the question raised was whether "Dhrua Star" was a religious symbol. The Supreme Court ruled as under;

"The basic concept of Hindu religion is that the Supreme Being is in every inanimate object, plant, creature of person, i.e. in the entire creation and that the entire creation is within the Supreme Being. If therefore, according to the fundamental concept of Hindu religion. God or Divinity is the reality or the substance of everything that exists; it would not be possible to say that any particular object is a symbol of the Hindu Religion. It is true that various deities in the Hindu pantheon are associated with some specific objects, birds or animals. Thus, for example, Shiva is associated with a trident and coiled cobra around his neck. Vishnu is associated with the Cobra "Shesha" on which he reclines as upon a bed; the eagle is associated with Vishnu as his vehicle; the goddess Lakshmi is associated with lotus upon which she stands and so on and so forth."

In this judgement the Supreme Court rued that a reference to prophets or religions or deities venerated in a religion or to their qualities and deeds does not necessarily amount to an appeal to the religious sentiment of the electorate. Something more has to be shown for this purpose.

43. In AIR 1961 Mys 106, this court was considering with regard to the symbol of bullocks. The facts in that case would show that it stands totally on a different footing than the facts of the case on hand.

44. Sri Acharya, learned Senior counsel rightly in my view rightly pointed out that at the most the evidence on record would show that these two Swamijis are respected and regarded on account of their service to the humanity as a whole.

45. It is also necessary at this stage to notice a judgement of the Supreme Court reported in AIR 1965 SC 183. The Court noticed the Section 123 of the Act and ruled that the said section falls into two parts (i) an appeal by candidate, his agents or by other persons with the consent of the candidate or his election agent to vote or refrain from voting for any person on the ground of his religion, race, community or language and (ii) use of or appeal to religious symbols. etc., The Supreme Court in that case has considered as to whether the word "OM" has any specific religious significance and has ruled in para 10 as under;

"A Symbol stands for or represents a religious symbol, there must be a visible representation of a thing or concept which is religious. To 'OM" high Spiritual or mystical efficacy is undoubtedly ascribed; but its use on a flag does not symbolise religion, or anything religious."

46. In AIR 1965 SC 669, the Supreme Court has ruled that;

"Worship of mortals is so common, at least in our country, that no one can seriously attach religious significance to it. Such worship has no connection whatsoever with religion and is often motivated by fear of authority or by hope of reward."

In the light of the clear pronouncement of the apex court, the depictions of two photos of the two Swamijis do not attach any religious significance. No acceptable material evidence is placed on record to show that these photos amount to religious symbols as understood in law. I must repeat against the words of the Supreme Court that such worship has no connection whatsoever with religion in the given set of circumstances. It, at the most, represents respect for noble services rendered by them. Moreover the Supreme Court has cautioned the courts with regard to proof of corrupt practice in AIR 1994 SC 1733 at para 64 ruled as under;

"The proof of commission of corrupt practices must be clear, cogent, specific and reliable as the charge of a corrupt practice is almost like a criminal charge and the one who brings forth that charge has the obligation to discharge the onus of proof by leading reliable, trustworthy and satisfactory evidence."

In the case on hand, evidence is not cogent, specific and reliable for the purpose of proving corrupt practice in terms of elections laws.

47. In the given set of circumstances, and in the absence of any positive material available on record, it is not possible for this court to declare that mere depction of photos of the two Swamijis amount to religious symbol. A visible representation of a thing or concept which is religious, in order to be a religious symbol, is missing in the case on hand.

48. In these circumstances, the argument on religious symbol placed by the petitioner is rejected.

(b) Appeal in terms of Religious Symbol

49. The next question is as to whether any appeal is made in terms of "Religious Symbol".

50. Evidence of PW-2 to 4 would show that the pamphlets with the photos of the Swamijis were distributed. They have also given some details in evidence. Assuming that these pamphlets were distributed, even then if cannot be said that a "religious symbol" has been made use of in the case on hand. I have already ruled that mere depiction of photos of these Swamijis cannot be declared as "Religious Symbol". Even if it is a "religious Symbol" then also there must be something much more forthcoming by way of an appeal. In this regard, it is relevant to notice the judgement of the Supreme Court in AIR 1994 SC 1627. The Supreme Court noticing the depiction on poster of leader of party to which candidate belonged in attire of Lord Krishna blowing shanku and quoting words of Bhagawad Geetha addressed by Lord Krishna ruled that use of such symbol coupled with printing upon it of words derogatory of rival candidate amounts to use of religious symbol. Even in ILR 1978 (ii) Delhi, 48, the court noticed that an appeal was made by use of portrait of "Durga Matha".

51. In the case on hand, I do not see that any religious appeal has been made use of by photos of the two Swamijis. However, Sri Vijaya Shankar, learned Senior Counsel, has argued that use of these photos have influenced the minds of the people. Even here again no acceptable evidence is forthcoming.

As pointed out by the Supreme Court worship of mortals is so common, at least in our country that no one can seriously attach religious significance to it. Such worship has no connection whatsoever with religion and is often motivated by fear of authority or by hope of reward. Looking from any angle, petitioner in my opinion has not proved that depiction of these two photos by itself amount to "religious symbol" and that the same has been used by way of appeal to voters. Apart from photos no other material is placed on record to show that there was influence on people on religion basis. The Supreme Court has ruled in several cases that there should be something more than the mere picture. That is missing in the case on hand.

In these circumstances the argument on appeal in terms religious symbol is rejected.

(C) Printing and consent of the candidate

52. The next question is consent of the candidate in the matter of publishing and distribution of pamphlets.

53. An issue has been framed with regard to the consent in terms of issue No. 3. It is pleaded that the successful candidate, his agents and the President of the Taluk Janata Dal, have published and distributed various kinds of pamphlets and the photos of these two Swamijis are published with the consent of the first respondent. The same in denied. In this connection it is to be noticed that Exs. P-4 and P-5 are the two pamphlets on which the entire argument is developed by the parties. Ex. P-4 is published by Agaluguppa Bettaswamy Gowda and Srinivasa at Nisarga Mudrana, Ramanagar. Similarly, Ex.P-5 is published by Taluk Janata Dal President, which is also printed at Nisarga Mudrana, Ramanagara -1000 copies.

54. PW-1 has spoken about the printing and distribution. He has stated that these pamphlets were distributed throughout the Koratagere Constituency. He has denied in cross- examination that Exs.P4 and P5 were not printed at his instance. He has further denied that it was printed at the instance of his agents and supporters.

55. PW-2 has stated that on 23-8-1999, while he was proceeding towards Hagaluguppe Village, Srinivas and supporters of the first respondent were distributing pamphlets which were printed with the Photos of Sri Balagangadhara Swamy and Sri Shivakumar Swamy. He has stated that when the election campaign was going on Bettaswamy Gowda and Srinivas were distributing the Pamphlets Ex. P4 and 5. In cross- examination he has stated that he is a Lingayath by community so also the petitioner. He says that some cases are pending against him.

56. PW-3 has stated that he has noticed Dasarahalli Ramesh and the supports of JD (S) distributing handbills. He has also denied the suggestions made to him in the cross-examination.

57. PW-4 A. Nagarajaiah, an agriculturist has identified the pamphlet.

58. RW-1 was examined and he has stated that it was not published at his instance.

59. A combined reading of the evidence of PW-1 to 4 would show that the pamphlets were distributed. In fact the names of the persons distributing the pamphlets have also come in evidence. Respondent has not chosen to examine those persons as his witnesses. Moreover in the matter of election pamphlets are being printed and distributed. Pamphlets are basically for distribution. Except suggesting that PWs-2 and 3 belong to the same community no other acceptable evidence is forthcoming regarding distribution. Therefore this court on the basis of the evidence on record can safely presume that these pamphlets were distributed. In fact Ex. P-5 is at the instance of the President of the Taluk Janata Dal President.

60. Let me see as to whether the petitioner has given consent with regard to printing of these pamphlets. Lot of arguments has been placed in this regard.

61. PW-1 has stated that these two documents have been printed at the instance of the winning candidate. The other witnesses have spoken about the distribution of these pamphlets. PW-6 Sri Jayaram Raj Urs T. R. Deputy Commissioner, Tumkur District, states that he was summoned to produce the statement of expenses filed by the returning candidate. It is at Ex. P-17. In the said exhibit there was an entry for payment of Rs. 250/- marked as Ex. P-17 (a) towards handbill printing paid to Basaveshwara Printers, Koratagere. The file containing vouchers is marked as Ex. P-18. In respect of the entry in Ex. P-17 (a) there was a complaint given to him. He has noticed that in Ex. P-17 (a) some whitener has been applied and over written as Basaveshwara Priners, Koratagere. In cross -examination nothing has been suggested to this witness.

62. PW-7 Deputy Secretary, Governor Office, Bangalore has stated that Ex. P-9 is an endorsement issued by him after verifying the statement of expenditure. At the time of issuing the

endorsement, in Ex. P-17 it was written as Nisarga Mudrana, Ramanagara. Whitener has been applied at Ex.P-17 (a) and over written as Basaveshwara Printers, Koratagere. In cross-examination he has stated he did not find any voucher relating to payment made to Nisarga Mudrana, Ramanagara. He has also referred Ex-R-1 and R-2 in his evidence.

63. RW-1 C. Channigappa, the winning candidate was examined and he has stated that in Ex. P-4 it is shown that it is printed at Nisarga Mudrana, Ramanagara. The same appears to have been printed by Hagalguppe Bettaswamy gowda Srinivas, a party worker. He has also stated that he has not specifically shown the amount of expenses incurred towards printing. At Ex. P-17 it is shown that Rs. 250/- has been incurred towards printing expenses. He admits that some overwriting has denied that the pamphlets were printed at his been done by applying whitener at page No. 7 and written as Basaveshwara Printers. Koratagere. He has instance at Nisarga Mudrana. Ramanagara. In para 19 he says that these pamphlets were printed by some persons without his consent. Sri Siddaganga Math Swamiji sent a letter to the President of the Janata Dal (S) party as per Ex. P-6. He has denied seeking pardon from the Swamiji.

64. In Ex. P-17 it is shown that hand bills printing expenses for 1000 copies Rs. 250/-. There is also whitener applied thereafter at Ex. P-17 (a), Ex. P-4 is shown as 1000 copies. A combined reading of the evidence of the petitioner witnesses, in the light of Ex. P-4, P-17, and P-17 (a), it cannot be said that the petitioner has not proved that Ex. P-4 was printed at Nisarga Mudrana Ramanagara. Therefore Sri Vijaya Shankar, learned Senior Counsel is right in his submission that an inference could be drawn in the case on hand in the light of the material on record. Therefore it cannot be said that it was not printed with the consent of the respondent. Mr. Acharya, learned Counsel however, refers to me that the evidence cannot be accepted in the light of the amendment. At any rate, in the light of the evidence against the respondent. I accept the contention that Ex. P-4 was printed with the consent of the winning candidate. In so far as Ex. P-5 is concerned, the same has been printed by Taluk Janata Dal President. Respondent No. 1 did not dispute the existence of Ex. P-5 and he has also not chosen to examine his own Taluk President. In the given set of circumstances, against I can draw adverse inference against the respondent in the matter of Ex. P-5 also. Therefore in my view Ex. P-4 to 5 were printed with the consent of the petitioner and they were distributed. It is also to be seen in this regard that the letter addressed by the Swamiji at Ex. R-1 and R-2, Ex. R-1 is nothing but Ex. P-7, Ex. P-7 is the certified copy issued by the Deputy Commissioner. There is some difference between Ex. P-7 and Ex. R-1. At any rate what is clear to this court is that a letter was issued by Sri Siddaganga Math complaining about the pamphlets. In fact Rx. R-2 is again a letter dated 10-9-1999 issued by the Deputy Commissioner. A reading of these documents would show that the Swamiji also had complained about the printing of the same and there is some evidence on record to show that the contesting respondent did meet the Swamiji in this regard. Therefore taking into consideration all these aspects of the matter, it cannot be said that Ex. P-4 and 5 have just come into existence for the purpose of this case or that same were not printed with the consent of the respondent.

In the result, issues 1 and 2 are held against the petitioner.

65. In so far as issue No. 3 is concerned, petitioner failed to prove corrupt practice but he has proved the consent of the first respondent in the matter of printing of Ex. P-4 and 5.

II. Findings on issues 4, 5, 6 and additional issues 1 and 2.

66. Though these issues have been framed, parties have not addressed any argument with regard to rigging, booth capturing, recounting or false statement. Therefore it is unnecessary for me to give any finding on these issues. In fact the parties argued only on the issue of appeal to voters by use of religious symbol in the case on hand. Even otherwise, a reading of the evidence on record would show that the theory of undue influence is not supported by the evidence available on record. Mere evidence of PW-1 does not by itself could be accepted in the given set of circumstances. According to me the first respondent attacked and assaulted Smt. Jayanthi, the third respondent and she has not chosen to enter appearance. In these circumstances, it cannot be said that a case of undue influence is made out by the parties. Similarly, with regard to false statement, no acceptable evidence is forthcoming in the case on hand. At any rate there is no evidence with regard to falsity in the case on hand. No acceptable evidence is also forthcoming with regard to rigging and booth capturing.

These issues are not proved and not canvassed at the time of arguments.

67. I have already come to a conclusion that though Ex.P-4 and P-5 were printed and distributed with the consent of the first respondent, the same are not religious symbols in the eye of law. If that is so, corrupt practice is not established.

68. Before concluding, this court is of the view that the constitutional mandate of election free from corrupt practice is to be followed for an orderly democratic society in terms of the constitution. Mixture of religion and politics is not called for in terms of our constitution. It is hoped that all parties take note of the laudable object of the Indian Constitution in maintaining secular free democracy by avoiding religion- politics or politics - religion for a fair election in terms of our Constitution and Representation of People Act.

III. Findings on Issue No. 7

69. In the light of my finding on corrupt practice in terms of election laws, this petition has no legs to stand and the same has to be dismissed and I do so in the case on hand. In so for as the costs are concerned, I deem it proper to direct the respective parties to bear their respective costs on the peculiar facts and circumstances of this case.

IN THE HIGH COURT OF KARNATAKA AT BANGALORE
DATED THIS THE 16th DAY OF APRIL 2003
BEFORE
THE HON'BLE Mr. JUSTICE R. GURURAJAN
ELECTION PETITION No. 15/ 1999

BETWEEN

1. C. Veerabhadraiah
S/o. Channaveerappa, No. 72. YRS.
B. H. Road, Tumkur. ......PETITIONER (S)
(By Sri Mahesh R. Uppin Adv.,)

AND

1. C. Channigappa,
S/o. Channarayappa, Age: Major,
At present M. L. A. Legislative Home, Bangalore.
2. Andanappa
S/o. Byrappa, Age: Major, Parwathi Nagara, Laggere Main Road, B'lore-58.
3. Jayanthi
Age: Major, W/o. D. Balasubramanya,
No. 873, 19th Main Road, Banashankari II Stage, Bangalore- 70.
4. Aradhya,
Age: Major, S/o. Lingaiah, No. 140, 4th Main Road, 5th Cross,
Manjunatha Nagara, 2nd Stage, Rajajinagar, Bangalore.
5. R. Prakash
Age: Major, S/o. N. Ramaiah, Garden House, Mahimapura,
Tyamagondalu Hobli, Nelamangala Taluk.
6. Veeranna,
Age: Major. S/o. Kamanna, Ex. Minister, Koratagere Town. .....RESPONDENT (S)
(By Sri D. L. Jagadeesh & A. S. Mahesh)

This Election Petition is filed U/s. 81 of Representation of People Act 1951, by the Petitioner-Candidate at 1999 General Election to the Karnataka Legislative Assembly Constituency No. 56 Koratagere Legislative Assembly Constituency held on 5-9-1999 praying to; Declare declaration made by the Returning officer as contained in Annexure-A declaring first respondent as the elected candidate from No. 56, Koratagere Legislative Assembly Constituency as void on the ground of Section 100 (1) (b), (ii), (iii), (iv) of the Representation of People Act, 1951, etc.

This Election Petition coming on for evidence from 27-9-2001 to 13-3-2002 and for arguments between 18-3-2002 to 7-03-2003 and for pronouncement of order on 16-4-2003, in the presence of Sri Mahesh R. Uppin, Advocate for petitioner and Sri D. L. Jagadeesh and Sri A. S. Mahesh, Advocate for Respondent No. 1 and Sri A. V. Gangadharappa, Advocate for Respondent No. 2, and Sri P. Chandra Shekar for Respondent No. 5 and service of Respondents 3 & 4 are held sufficient vide Court Order dated: 25-2-2000 and that for the reasons stated in the Order, it is ordered and decreed that the Election Petition be and the same is hereby dismissed and parties are to bear their respective costs.

Registrar (Judicial),

P. R. 65

By Order,
TAPAS KUMAR
Secretary, Election Commission of India.